

**Nominations to the Federal Election Commission**  
**June 13, 2007**

Good morning. The Rules Committee welcomes you to the first confirmation hearing for the Federal Election Commission in over 7 years. The following four individuals have been nominated by the President:

- Mr. David M. Mason, of Virginia, for reappointment to a term expiring April 30, 2009;
- Mr. Steven T. Walther, of Nevada, for appointment to a term expiring April 30, 2009;
- Mr. Hans von Spakovsky, of Georgia, for appointment to a term expiring April 30, 2011; and
- Mr. Robert D. Lenhard, of Maryland, for appointment to a term expiring April 30, 2011.

I welcome all four of you here today – along with your families – to this historic hearing. *To the public, I note that this hearing room is very crowded, and to accommodate those who cannot get seats, we have opened up S.385 right down the hall, and equipped it with television coverage of the hearing)*

In 1974, the FEC was first established by statute in the Federal Election Campaign Act. And this is the first time in its history that none of its current members are serving within a term for which he or she was nominated.

This is a direct result of the Senate not acting on previous FEC nominations in either of the two sessions of the 109<sup>th</sup> Congress. I would hope that these nominations will be addressed in the current Congress.

The FEC currently has five incumbent members and one vacant seat. Three of the nominees are serving under recess appointments made by the President on January 4, 2006.

Another – Commissioner Mason -- is eligible for reappointment made by the President on January 4, 2006 and now serves in a holdover status since April 30, 2003.

The fifth Commissioner – Ellen Weintraub -- serves in a holdover capacity indefinitely because the term expired without a replacement.

Finally, one vacant seat remains due to the resignation of Commissioner Michael Toner in March 2007. The President has not yet announced a nomination for this seat.

A very serious situation could result if the Senate fails to confirm at least some of the commissioners before recessing sine die. *All three of the recessed nominees would no longer be eligible to be on the FEC.*

In order to perform many of its legal and administrative duties under statute, the FEC must vote out certain matters with an affirmative 4 votes or the matter will not go forward.

So, we could potentially be faced with conditions that leave only the two members serving as holdovers on the FEC.

*This would mean that the FEC would lack a majority of 4 votes to conduct essential business. And the most likely and timely way around it would be for the President to make three new recess appointments – but with no advice and consent from the Senate.*

This situation could be a recipe for disaster as America moves into the 2008 presidential and congressional election cycle with record campaign spending.

The FEC is the authoritative primary source for the amount of money raised and spent in federal elections.

With over 7,000 registered political and non-political committees filing reports with over \$4 billion in spending, it is essential that such funding be subject to close scrutiny and disclosed in a searchable, transparent, timely, and user-friendly manner.

It is now five years since the enactment of the Bipartisan Campaign Reform Act, also known as McCain-Feingold, and it is imperative that the FEC address a number of serious issues that have arisen under this law.

Some of the most important outstanding issues are:

- So-called hybrid party-candidate advertisements
- Ethics
- Grassroots Lobbying (the Wisconsin Right to Life case now pending at the Supreme Court)
- Millionaires' amendment (contribution limits/disclosure)
- Local political activity (federal election activity)
- Public disclosure policies
- 2008 Presidential election (Funding)
- Implementation of Supreme Court cases and Congressional Requirements

I expect there will be a number of questions on these issues.

Serious concerns have also been addressed to the Committee with regard to one of the Commissioner's past conduct in the Department of Justice.

Several individuals and organizations have written the Committee, and I ask that these documents be included as part of the record.

I believe these concerns need to be fully addressed because they go to the very heart of what we have seen to be a politicization of the Justice Department under the current Administration.

The Committee has a duty to be fully informed before making a recommendation to the full Senate on the nominations.

So, in addition to the testimony today, the record will remain open for 5 business days for the Committee to receive other submissions for the record, as well as statements and questions for the nominees from the Members of this Committee. The record will close on June 20, 2007.

After the Committee has had time to consider the record of these four nominees, I plan to make a decision about convening an executive meeting to report the nominations to the Floor for an up or down vote.

I now yield to Senator Bennett, my ranking Member on the Committee.